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PIONEER COURTS AND JUDGES OF CALIFORNIA

BY J. M. GUINN

Although California for nearly four years after its conquest by the United States was governed by Mexican laws, very few of its present inhabitants have any idea of what those laws were or how they were administered.

Our Historical Society has in its possession a pamphlet of 26 pages, which purports to be "A Translation and Digest of Such Portion of the Mexican Laws of March 20 and May 23, 1837, as are supposed to be still in force and adapted to the present condition of California, with an introduction and notes." It was compiled by J. Halleck, Attorney-at-Law, and W. E. P. Hartnell, Government Translator. It was published at San Francisco early in 1849. Gen. Bennett Riley, Governor of California, approved this Digest and ordered 300 copies for distribution among the officers of the existing government—the same to be paid for out of the Civil Fund. It is one of the earliest books published in California.

It was held by the government that in accordance with a decision of the Supreme Court of the United States given in 1823, in the case of Florida that "The laws which were in force in this country previous to its conquest and which do not conflict with the Constitution, Treaties and Laws of the United States, and the government recognized in those laws, which was Mexico, is the only one which can be recognized in any legal court, and these laws and this government must continue until changed by, or with the consent of Congress."

During the military occupation of California the commanding officer here, under the general authority conferred on him by the laws of war, could suspend or change any of the laws of Mexico affecting the people of this territory; but all such suspensions and changes were only of a temporary character; and ceased with the war. There were but very few suspensions made. The governors were instructed by the Secretary of War to allow the people to conduct the government of the pueblos without interference.

Under the Mexican government there were three forms of courts—courts of first, second and third instance.

The lowest court was the court of first instance (*Primera Instancia*). It was presided over by an alcalde. He had both civil and criminal jurisdiction over a district and reported to the Superior Tribunal.

The Superior Tribunal consisted of four judges (*ministros*) and one attorney-general (*fiscal*). The three senior judges composed the first bench (or *sola*), and the junior one the second. Besides the judges of the courts of first, second and third instance there were justices of the peace in the small settlements and at some of the ranchos.

In addition to the judges, there were prefects and sub-prefects. These ruled over districts. They were both executive and advisory officers. They were sort of quasi governors. Their duties were multitudinous and multifarious. It was incumbent on them to take care of the public order and tranquillity in their districts, publish the laws and see that they were enforced, establish schools and see to it that "the masters and mistresses not only possess the necessary instruction, but that they be of good moral character, the circumstances of the place being taken into consideration." It would seem from this that the education and the morals of the teachers were to be modified by location. The prefects were to advise with the governor in regard to encouraging agriculture and other industries and to order vagabonds and tramps with the consent of the governor, to such manufactories and agricultural establishments as may choose to receive them voluntarily, and finally, as Article 24 defining their duties, says, "They shall be the ordinary channel of communication between the governor and the subaltern authorities of the district."

Under the domination of Spain and Mexico there were no jury trials in California. The first jury summoned in California was impaneled in 1846 (seventy-five years after its first settlement), by Walter Colton, Alcalde of Monterey. Colton's jury had in it four Spaniards, four native-born Californians, and four Americans. It was a cosmopolitan jury. The plaintiff had been damaged in his property and the defendant in his character. "Neither recovered all that he claimed," says Colton, "but both were satisfied with the verdict," and jury trials became so popular that the natives wanted to settle all their disputes by juries.

During the interregnum between the conquest and the adoption of the State Constitution there seems to have been no superior tribunal appointed. The pueblos elected alcaldes and when none were elected the governor appointed, and if these judges of the court of first instance reported to any one it must have been to the

governor. During the transition stages while the government was in a chaotic condition, there was but little limitation on their powers, Colton says while he was Alcalde at Monterey in 1846 and '7, he had greater power than the Lord Chief Justice of England or the Chief Justice of the United States. Even under Mexican domination the alcalde sometimes took upon himself all the functions of the different departments of government—law-giver, judge, jury and executioner.

In my researches among the old Spanish archives in the City Hall, I found the records of a case where José Sepulveda, Alcalde of Los Angeles in 1837, reported to the Ayuntamiento or Municipal Council, that he had tried the prisoners Timato and Mateo, Mission neophytes, and had found them guilty of murder. He had condemned them to be shot on next Sunday. He invited the regidores to witness the execution. At the next meeting of the Ayuntamiento he reported the governor had reversed his decision and had referred the case to the superior tribunal.

This he characterized as a useless waste of time. He had given the culprits a fair trial. They had confessed their guilt and deserved to die.

There was another class of judges in California under Mexican rule, and during the earlier years of American domination who filled a very important place in the local government, but who have passed down and out and have been forgotten. These were the jueces del campo, judges of the plains. Their chief duty was to decide the disputed ownership of cattle at the rodeo. Their court-room was the cattle corral and their woolsack the saddle. From their decision there was no appeal.

Some of these judges put great dignity into their office. In the old archives in the City Hall are the records of an impeachment trial, held in 1828, of Don Antonio Maria Lugo, who at that time owned about all the land between Los Angeles and the sea. It was the first impeachment trial of a judge ever held in California.

One witness told how the judge beat a boy who gave him a disrespectful answer, and had not the judge fallen over a chair, said the witness, he would have been beating the boy yet, six months after. Another witness, young Pedro Sanchez, testified that he met the judge on the Calle Principal of the Pueblo and because he, Sanchez, did not take his hat off and remain uncovered while Lugo rode past, the judge tried to ride his horse over him.

The office of juces del campo was continued for twenty years after the American conquest. It ceased to be an office held for the mere honor. The Americans made it a salaried office, and it was

sometimes hinted that the decisions had the jingle of coin in them. After the discovery of gold and the consequent rush to the mines the governors found considerable difficulty in getting men to act as alcaldes in the rural districts, and some that they did appoint gave them a great deal of trouble. Some that were elected by the people considered themselves superior to the governor. One by the name of John H. Nash was elected Alcalde of Sonoma. In the division of the offices in the Pacific Republic after the raising of the Bear Flag he had been appointed by Ide supreme judge of the embryo republic. As alcalde, his tyrannical acts caused a great many complaints. Governor Mason appointed another man in his place. Nash refused to give up the office and defied the United States government to remove him. He had quite a following of rough characters, and it was considered a hazardous undertaking to arrest him. Governor Mason sent Lieutenant William H. Sherman to capture him. Sherman secured a detail of sailors from Commodore Biddle and proceeded by boat to the nearest point to Sonoma. He slipped in during the night and with his detail of sailors seized Nash and bore him to the boat. He was shipped to Monterey, where Governor Mason took the rebellion out of him, and he was willing to recognize the United States government.

Another eccentric alcalde but of a very different type from Nash, was Bill Blackburn. Bill was a shingle-maker at Santa Cruz when he was made a judge of the court of the first instance. He had but little knowledge of law and a very limited acquaintance with books, but he had a good supply of hard common sense.

Some of his court proceedings and his decisions were new to the codes, but they were effective. A Mexican, Pedro Gomez by name, had killed his wife in a drunken fit. Bill arrested him and brought him before his court, summoned a jury on Thursday, tried him and found him guilty on Friday, and sentenced him on Saturday to be executed on Monday. The sentence carried out, he administered on his estate and bound out to service his two minor daughters. Then he reported the case to Governor Mason. The governor was horrified and severely censured Bill for his hasty action. Bill said the fellow was guilty; he had had a fair trial. What was the use of shutting him up in jail and feeding him at the expense of the state?

One of Bill's decisions probably has no parallel or precedent in the history of jurisprudence.

Two young Californians were in love with the same senorita. One owned a fine horse with a beautiful mane and tail. His rival possessed a beautiful head of curly hair of which he was quite

proud. The young lady was inclined to look with favor on the *paisano* of the horse and the *paisano* of the hair became jealous.

Watching his opportunity while the horse was staked out to feed he clipped the hair of its mane and tail off to the skin. Complaint was made to Judge Blackburn. He summoned the horse clipper into his court. There was no difficulty in proving him guilty. The judge looked through all the law books in his possession but failed to find any penalty to fit the offense.

Finally he bethought himself of the Law of Moses, "An eye for an eye and a tooth for a tooth." He had Pedro of the raven locks seated on a stool in front of his office; he summoned a barber and ordered him to clip Pedro's curly locks close to the skin and then shave his head. This done he turned man and horse loose to grow crops of hair.

Blackburn's prompt administration of justice soon made his district one of the most orderly in the territory.

Under the old constitution of California we had the Court of Sessions, the County Court and the District Court. Some of the performances of the early judges and the court customs are quite amusing in the light of the present dignified demeanor of our courts and judges.

One custom quite common in early days went out of use about 30 years ago when the telephone came in. In the old court house which stood where the Bullard block now stands, the court room was small and uncomfortable. Clients, witnesses and attorneys waiting their turn would go down stairs and seat themselves in the shade of the building or in some of the offices near the court house. When some of these were needed in the court room the bailiff would poke his head out of a window and yell at the top of his voice the name of the party wanted; he always appended esquire to the party's name, and called it three times.

One day in that stentorian voice of his that he had cultivated in driving an ox team across the plains he yelled John W. Horner, Esquire, John W. Horner, Esquire, John W. Horner, Esquire. Across the street came a prompt response. Gone round the corner a square, gone round the corner a square, gone round the corner a square.

Imagine if you can a more comical scene if the custom was still continued than twelve bailiffs of the twelve courts with their heads stuck out of their respective court rooms and each bawling at the top of his voice the name of some esquire that was wanted in court.

Under Mexican domination in California the alcade of a town acted as police judge. In Los Angeles after the conquest this custom was continued down to quite a recent date. The adoption of the new charter in 1889 relieved the mayor's office of this onerous duty. Among the last mayors who performed this duty were Edward F. Spence and Wm. H. Workman, both members of our Historical Society.

Spence was a representative of that virile race which has exerted a powerful influence in the history and development of our country—the Scotch Irish. He had an unlimited fund of Irish wit and repartee at his command. It was as amusing as a comedy and sometimes as pathetic as a tragedy to see Mayor Spence on a Monday morning dispensing justice to a motley collection of tramps, drunks and police pick ups.

His sentences were sometimes preceded by fatherly advice, sometimes by rebukes sizzling hot and sometimes by a lecture interspersed with wit and humor that put the culprit in good humor to receive his doom. And no doubt made it feel lighter. Mayor Spence died nearly twenty years ago, respected and esteemed by all who knew him.

There are many amusing stories that might be told of the courts and judges of long ago but my paper is already too long.